

**REMARKS**

Claims 1 to 31, 40 to 43, and 45 to 48 have been previously canceled.

Claims 32 to 36; 38; 39; and 44 remain in the application. Among these, claim 32 is the sole independent device claim, and claim 44 is a dependent method claim, linked to claim 32. Claims 32 to 36; 38; 39; and 44 encompass the elected invention.

Reexamination and reconsideration are respectfully requested in view of the amendments and the remarks that follow.

Claim 32 stands rejected under 35 U.S.C. 102(b) as being anticipated by Ahmed (US Pat. No. 5,320,630).

Claim 1 has been amended to further define features of the elected invention that are not taught or suggested or made obvious by Ahmed. More particularly, Ahmed does not teach or suggest a motor-driven tool for applying an implantation force to a helical fastener sized and configured for penetration in tissue in response to the implantation force applied according to prescribed conditions. Claim 1 defines the motor-driven tool as comprising a tool body, and a drive motor carried in the tool body. Claim 1 defines a driven member coupled to the drive motor, the driven member also being carried by the tool body and being operable to apply the implantation force during operation of the drive motor. Claim 1 defines a carrier on the driven member couples the fastener to the driven member to transfer the implantation force from the driven member to the fastener. Claim 1 defines a motor control unit carried in the tool body and being coupled to the drive motor, the motor control unit being conditioned to operate the drive motor in phases including: i) an initial phase operating the carrier to transfer the implantation force to the fastener under conditions that are short of the prescribed conditions so that only partial implantation of the fastener occurs and the fastener remains coupled to the carrier; ii) a lull phase commencing automatically at the end of the initial phase interrupting operation of the carrier; and iii) a final phase operating the carrier under conditions that supplement the conditions of the initial phase to achieve the prescribed conditions to release the fastener from the carrier and implant the fastener in tissue, the motor control unit requiring, after automatically entering the lull phase, a prescribed final phase command to advance from the lull phase to the final phase.

Support for “helical” can be found at least at page 15, lines 14-15, and Fig. 7. Support for the helical fastener configured for “penetration” in tissue can be found at least at page 17, lines 2-6,

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and Fig. 8B(2). Support for “only partial implantation of the fastener occurs” can be found at least at page 4, lines 22-25, and previously presented claim 44.

Ahmed teaches ligating rings 50 placed in ligating relation to a lesion (see Abstract, and Figs. 6, 7, 8, and 9, for example.) The rings 50 are not helical and the rings are not sized and configured to penetrate tissue in response to an implantation force, nor are the rings 50 implanted in tissue as asserted by the Examiner.

The Examiner referenced col. 9, lines 33-35 and Fig. 3 as disclosing an initial phase operating the carrier to transfer the implantation force to the fastener under conditions that are short of the prescribed conditions so that the fastener remains coupled to the carrier. Fig. 3 shows multiple ligating rings 50 carried by the end of the Ahmed device, and col. 9, lines 33-35 merely states that “a motor control could be provided for controlling the movement of cable 55a in precise steps.” A review of Ahmed Figs. 7, 8, and 9, and col. 6, line 58 through col. 7, line 2, show and describe that each ligating ring 50 is either on or off. There is no teaching or suggestion of a helical fastener that is only partially implanted, as defined in amended claim 1.

Accordingly, Applicants request the withdrawal of the rejection under 35 U.S.C. 102(b).

Claims 32 to 36; 38; 39; and 44 are believed to be in condition for allowance. Applicant requests the opportunity to reinstate withdrawn dependent claim 37 upon allowance of claim 32, which is believed to be generic.

Respectfully Submitted,

By

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